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2 CHARLES LIU – State Bar No. 190513  
3 **WINTHROP COUCHOT**  
4 **PROFESSIONAL CORPORATION**  
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9 **UNITED STATES BANKRUPTCY COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

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14 In re  
15 PHAGE BIOTECHNOLOGY CORPORATION,  
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18 Debtor and Debtor-in-Possession  
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20 Case No. 08-09859-LA11  
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22 Chapter 11 Proceeding  
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**DEBTOR'S EMERGENCY MOTION  
FOR ORDER APPROVING  
ADDITIONAL LOANS UNDER  
DEBTOR-IN-POSSESSION LOAN;  
DECLARATIONS IN SUPPORT  
THEREOF**

1 Phage Biotechnology Corporation, a Delaware corporation, the debtor and debtor-in-  
2 possession in the above entitled Chapter 11 proceeding (the “Debtor”), hereby moves the Court, on  
3 an emergency basis, and requests an interim hearing on or before August 14, 2009, for an order  
4 granting the following relief:

- 5 A) Authorizing the Debtor to enter into that certain Extension and  
6 Amendment to Loan Agreement, Amendment to Secured Convertible  
7 Promissory Note, Amendment to Security Agreement, and Amendment to  
8 Lenders Rights Agreement (the “Amended DIP Facility”) attached in  
9 substantially final form to the accompanying Declaration of Thomas  
10 Stegmann (the “Stegmann Declaration”) as Exhibit “A;”
- 11 B) Approving the extension of the maturity date of the Loan Agreement,  
12 Security Agreement, Lenders Rights Agreement, and Secured Promissory  
13 Note, all dated November 19, 2008 (the “Original DIP Facility”) to June  
14 30, 2010, for an extension fee of \$75,000;
- 15 C) Approving the additional funding of up to \$1,000,000 pursuant to the  
16 Original DIP Facility as amended by the Amended DIP Facility (the  
17 “Amended DIP Loan”);
- 18 D) Authorizing the use of the Amended DIP Loan on an emergency basis in  
19 accordance with the interim budget attached to the Stegmann Declaration  
20 as Exhibit “B” (the “Interim Budget”) until a final hearing is set on this  
21 Motion;
- 22 E) Authorizing the use of the Amended DIP Loan in accordance with the  
23 budget attached to the Stegmann Declaration as Exhibit “C” (the “Budget”)  
24 after the final hearing on this Motion;
- 25 F) Authorizing the Debtor to exceed any line item in the Interim Budget and  
26 Budget by up to twenty percent (20%) in any one month, as long as the  
27 overage for all items in the aggregate does not exceed fifteen percent (15%)

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1 of the total budget amount for that month, and providing that any unused  
2 funds in one period may be carried over and used in a later budget period;

3 G) Setting a final hearing on this Motion in accordance with the requirements  
4 of Rule 4001 of the Federal Rules of Bankruptcy Procedure; and

5 H) Granting such further relief as the Court deems just and proper.

6 This motion is made on the basis of the Stegmann Declaration, the Declaration of Charles  
7 Liu, the within the points and authorities, and on such other evidence as the Court elects to  
8 consider prior to or at the hearing on this matter.

9  
10 DATED: July 31, 2009

**WINTHROP COUCHOT  
PROFESSIONAL CORPORATION**

11  
12 By: /s/ Marc J. Winthrop

13 Marc J. Winthrop

14 Charles Liu

15 General Insolvency Counsel for  
16 Debtor and Debtor-in-Possession

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PRELIMINARY STATEMENT3  
Phage Biotechnology Corporation, the debtor and debtor-in-possession herein ("Phage" or  
4 "Debtor") is in the business of developing and commercializing an efficient method of  
5 manufacturing bio-pharmaceuticals with its proprietary technology. On October 2, 2008, certain  
6 creditors commenced an involuntary Chapter 7 case against the Debtor (the "Petition Date"). On  
7 October 28, 2008, the Debtor converted the case into a voluntary Chapter 11 case.8  
The Court previously entered an order authorizing the Debtor to enter that certain Loan  
9 Agreement, Secured Convertible Promissory Note, Security Agreement, and Lenders Rights  
10 Agreement, all dated November 19, 2008 (the "Original DIP Loan") to preserve the value of  
11 Debtor's business and provide the Debtor access to critical funds up to \$1,500,000 provided for in  
12 the Original DIP Loan from the "Lenders," as defined in the Original DIP Loan (the "Original DIP  
13 Facility"). The Debtor has operated pursuant to the Court-approved budget and has sought  
14 investments to fund the reorganization Debtor seeks to achieve pursuant to Chapter 11 of the  
15 Bankruptcy Code. The Debtor will soon exhaust the Original DIP Loan and requires additional  
16 funds to continue its efforts to reorganize, among these efforts is the continued negotiations with  
17 potential investors who may provide the capital needed to facilitate a successful reorganization.18  
By this Motion, Debtor seeks authority to enter into that certain Extension and Amendment  
19 to Loan Agreement, Amendment to Secured Convertible Promissory Note, Amendment to Security  
20 Agreement, and Amendment to Lenders Rights Agreement (the "Amended DIP Facility") attached  
21 in substantially final form to the accompanying Declaration of Thomas Stegmann (the "Stegmann  
22 Declaration") as Exhibit "A," to provide the Debtor with additional funding of up to \$1,000,000  
23 pursuant to the Original DIP Facility as amended by the Amended DIP Facility (the "Amended DIP  
24 Loan"). The Debtor also seeks approval of an extension of the maturity date of the Original DIP  
25 Loan to June 30, 2010, for an extension fee of \$75,000.26  
To preserve the value of its business, the Debtor needs the financing provided for in the  
27 Amended DIP Loan.

II

## **GENERAL BACKGROUND FACTS REGARDING THE DEBTOR**

**A) The Debtor.**

4 The Debtor is a Delaware corporation with its corporate office and its research and  
5 manufacturing facilities located in San Diego, California. The Debtor generates manufacturing and  
6 R&D revenue for work performed at the request of a related company, CardioVascular  
7 Biotherapeutics (“Cardio”). The revenue generated from this sole customer is not enough to  
8 produce a cash profit. The Debtor currently employs 11 people, including part time employees and  
9 consultants of various kinds. From the Debtor’s inception until October 7, 2008, the Debtor’s  
10 Chairman, President, and CEO was Daniel Montano (“Montano”). Mr. Montano resigned from all  
11 positions with the Debtor on or about October 7, 2008. The Debtor’s current CEO is Thomas  
12 Stegmann.

**B) The Debtor's Business.**

14 The Debtor was founded in 1998 to commercialize an efficient method of manufacturing  
15 bio-pharmaceuticals which was invented by a group of Ukrainian scientists. As a development  
16 stage company which is still not generating significant revenue, the Debtor depends significantly on  
17 external funding for survival and progress. A majority of the external funding provided to date has  
18 come from the holders (the “Noteholders”) of the Debtor’s promissory notes (the “Notes”). The  
19 Debtor’s promissory notes were issued at various dates from 2001 through to 2004 with a three  
20 year maturity date. The Debtor raised a total of \$16.7 million in the period from 2001 to 2005 from  
21 two series of convertible promissory notes. Series I totaled \$11.6 million principal with 233  
22 Noteholders and Series II totaled \$5.1 million of principal with 20 Noteholders. The principal and  
23 accrued interest of these Notes now total approximately \$23.5 million, or approximately 75% of the  
24 Debtor’s total debt. The corporate books of record of the Debtor are unaudited.

25 The Debtor has a contractual relationship with Phage Biotech Ukraine LLC, located in  
26 Kiev, Ukraine (“Phage Ukraine”), which employs a research team and supports the San Diego  
27 manufacturing facility. Substantially all of the Debtor’s original intellectual property was sourced  
28 from Phage Ukraine.

1           The Debtor's intellectual property includes five U.S. patents and related foreign patent  
 2 approvals in European countries with large markets for the Debtor's drugs. In Japan, three of the  
 3 Debtor's U.S. Patents are currently being examined.

4           The Debtor's main route to commercialization and profitability is to seek further revenue  
 5 generating activities for its licensed San Diego manufacturing facility, and to gain U.S. Food and  
 6 Drug Administration ("FDA") approval for its bio-generic and proprietary drug portfolio to be  
 7 manufactured by the Phage process. At present two compounds are in FDA clinical trials: Phage's  
 8 Human Growth Hormone ("HGH") for short stature children and Cardio's Fibroblast Growth  
 9 Factor ("FGF") for treatment of severe coronary heart disease, with a third clinical trial for which  
 10 Phage has received FDA approval to begin using FGF as a wound healing treatment.

11           **C) Events Precipitating This Chapter 11 Filing.**

12           The Debtor's financial problems and the consequent need to file this bankruptcy proceeding  
 13 were primarily caused by the following problems:

14           As a start up company, the Debtor has minimal income and thus needs infusions of outside  
 15 capital in order to fund its operations of developing and commercializing its intellectual property.  
 16 From 1998 to 2008, the Debtor raised net capital proceeds of \$24.5 million in common and  
 17 preferred stock, and note and loan financing. However, from late summer 2005 until summer of  
 18 2008, the Debtor only raised net proceeds of \$6.0 million of outside capital which was grossly  
 19 inadequate in relation to the Debtor's needs, maturing Note obligations, and the scale of its  
 20 opportunity. This failure to raise sufficient capital in the last several years led to the Debtor  
 21 defaulting on its Note obligations as well as obligations to other creditors.

22           **E) The Involuntary Bankruptcy Filing and Conversion to Chapter 11.**

23           Because of the Debtor's default under the Notes as well as the Debtor's default of its  
 24 obligations to one of its board members, on October 2, 2008 the following creditors of the Debtor  
 25 filed an involuntary Chapter 7 petition against the Debtor: Sergiy Buryak; International Legal  
 26 Consultants; Clifton Melvin; Simon Kornberg; Jon Kornberg; Forest Nominees Ltd.; Shellac  
 27 Limited; Alex Catto; Iain Little; Colin Abraham; Pang Yen Chen; Colin MacNab; Robert &

1 Katrina Chanson; Lalique Holdings; Fabio Pelli; Russel Earl Wayne Lotherington; Jonathan  
 2 Bonsey; Paul Murray; and Lindsey Fuller (collectively, "Petitioning Creditors").

3 Concurrently with the involuntary petition on October 2, 2008, the Petitioning Creditors  
 4 filed a motion for the appointment of an interim trustee. On October 7, 2008, Mr. Montano  
 5 resigned and the Debtor appointed one of its board members, Dr. Stegmann, to be the Debtor's new  
 6 CEO. Because the Petitioning Creditors have great confidence in Dr. Stegmann, the Petitioning  
 7 Creditors withdrew the motion for appointment of an interim trustee. The Debtor also appointed  
 8 two of the Petitioning Creditors, Richard Ritter and Robert Chanson, to the Debtor's board. The  
 9 Debtor's new board decided it is in the Debtor's best interest to reorganize in a Chapter 11 case so  
 10 the Debtor converted its involuntary Chapter 7 case to a voluntary Chapter 11 case.

11 **F) The General Outline of Turnaround Plan.** The Debtor's turnaround effort, which  
 12 is now substantially underway, first focused on obtaining emergency capital to pay the Debtor's  
 13 operating expenses and protect its property. Thus stabilized, the Debtor has been pursuing long  
 14 term capital to develop and commercialize its intellectual property.

15 **G) Assets and Liabilities.** The table below summarizes the value of the Debtor's  
 16 unaudited assets as of May 31, 2009 that serve as collateral for the secured claims affected by this  
 17 Motion:

ASSETS		
19 Current Assets:		
20 Unrestricted Cash	\$	73,556
21 Accounts Receivable - related party		95,000 a)
22 Prepaid Expenses		47,367
23 Total Current Assets		215,923
24		
25 Property, Plant, and Equipment (net)		353,135
26 Due from Affiliate		221,000 b)
27 Other (Security Deposits)		176,208 c)
28 Total Assets	\$	<u>966,266</u>

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2 a) Due from a related party, Cardio

3 b) Due from GHL for sales of preferred shares

4 c) Deposits for two leases and utilities

5 The above values are taken from the Debtor's May 31, 2009 balance sheet (unaudited).  
 6 They reflect accounting values (depreciated cost, etc.) not market values. The Debtor believes that  
 7 the market value of the Debtor's assets is less than the values indicated above.

8 The Debtor does not believe there are any secured creditors in this case. Debtor's counsel  
 9 performed a LEXIS search to confirm this. No secured claims undisclosed by this search. Of the  
 10 Debtor's total unsecured debt, approximately \$23.5 million, or 75%, is represented by Noteholder  
 11 claims.

12 H) **The Amended DIP Facility.** The terms of the Amended DIP Facility are  
 13 summarized below:

The Amended DIP Facility	
<b>Line Amount</b>	One million dollars (\$1,000,000)
<b>Advances</b>	\$200,000 upon Court approval of the Amended DIP Facility (the "Initial Disbursement"); further disbursements upon the Lender's approval up to a total of \$1,000,000.
<b>Interest Rate</b>	Interest will accrue at the annual rate of 10%.
<b>Term</b>	The Loan matures on June 30, 2010.
<b>Security</b>	All amounts owing under the Original DIP Facility and Amended DIP Facility will be secured by a first priority perfected security interest in and lien on all assets (tangible, intangible, real, personal and mixed) of the Debtor, whether now owned or hereafter acquired, including, without limitation, accounts, inventory, equipment, capital stock in subsidiaries, investment property, instruments, chattel paper, real estate, leasehold interests, contracts, patents, copyrights, trademarks and other general intangibles, and all products and proceeds thereof.

24 The foregoing is a summary of the material terms of the Amended DIP Facility. In the  
 25 event of a discrepancy between the summary of the terms described herein and the terms of the  
 26 Amended DIP Facility, the terms of the Amended DIP Facility documents control. Accordingly all  
 27 creditors and parties-in-interest are urged to read the Amended DIP Facility, in substantially final  
 28 form, attached to the Stegmann Declaration as Exhibit "A" in its entirety.

III

## **RELIEF IS JUSTIFIED ON AN EMERGENCY BASIS**

3 In section 363(c)(3), Congress recognized that preliminary hearings on cash collateral  
4 would frequently be held on an emergency basis by stating therein that such hearing “shall be  
5 scheduled in accordance with the needs of the debtor”. 11 U.S.C. § 363(c)(3). The courts have also  
6 recognized that emergency relief on the use of cash collateral is necessary after a case is filed. In re  
7 Center Wholesale, Inc., 759 F. 2d 1440, 1444 (9<sup>th</sup> Cir. 1985) (“We realize that ‘in certain  
8 circumstances the entire reorganization effort may be thwarted if emergency relief is withheld’ and  
9 that reorganization under the Bankruptcy Code ‘is a perilous process, seldom more so than at the  
10 outset of the proceedings when the debtor is often without sufficient cash flow to fund essential  
11 business operations.’ … It is for this very reason that Congress specified that hearings concerning  
12 the use of cash collateral ‘shall be scheduled in accordance with the needs of the debtor.’ ”); In re  
13 Sullivan Ford Sales, 2 B.R. 350, 355 (Bankr.D.Me.1980).

14 As indicated above, the Debtor is an operating company that is developing and  
15 commercializing an efficient method of manufacturing bio-pharmaceuticals with its proprietary  
16 technology. To successfully operate post-petition and preserve the value of this business enterprise  
17 at this critical juncture, the Debtor needs immediate relief from this Court.

18 As indicated in the attached Declaration of Thomas Stegmann, all of the items set forth in  
19 the Interim Budget are necessary to avoid immediate and irreparable harm to the Debtor.

Without the immediate ability to pay these costs and expenses, the Debtor cannot continue its business operations. On these facts and circumstances good cause exists for emergency relief. In order to continue operations the Debtor needs immediate relief from this Court. On these facts and circumstances good cause exists for an expedited hearing.

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**COURT APPROVAL OF THE AMENDED DIP LOAN**3  
**IS WARRANTED UNDER SECTION 364(c)**4  
Section 364(c) of the Bankruptcy Code sets forth the criteria that must be satisfied to  
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obtain a post-petition loan having priority over all other administrative claims:6  
(c) If the trustee is unable to obtain unsecured credit allowable under section  
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503(b)(1) of this title as an administrative expense, the court, after notice and a  
hearing, may authorize the obtaining of credit or the incurring of debt -  
8  
.....9  
(1) with priority over any or all other administrative expenses of the kind  
specified in section 503(b) or 507(b) of this title.10  
11 U.S.C. §364(c)(1).11  
12  
**A. The Debtor Has been unable to obtain financing by any other means.**13  
As stated above and set forth in the Stegmann Declaration, the Debtor must immediately  
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obtain financing in order to provide needed liquidity. Despite the Debtor's diligent efforts to  
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obtain financing from other sources, it has been unable to obtain credit on any more favorable basis  
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than what is set forth in the Amended DIP Loan. Accordingly, the terms presented to the court are  
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the best available in the market place at this point in time, for this type of loan, given the Debtor's  
18  
substantially overleveraged balance sheet, and its history of losses.19  
On the basis of the evidence submitted herewith, the Debtor has met the first prong of its  
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burden under Section 364(d), to wit, that it cannot find financing on more favorable terms. See, In  
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re Aqua Associates, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991) ("Obtaining credit should be  
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permitted not only because it is not available elsewhere, which could suggest the unsoundness of  
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the basis for use of the funds generated by the credit, but also because the credit acquired is of  
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significant benefit to the debtor's estate and that the terms of the proposed loan are within the  
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bounds of reason, irrespective of the inability of the debtor to obtain comparable credit  
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elsewhere."); In re Ames Dept. Stores, Inc., 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990) ("A court,  
27  
however, may not approve any credit transaction . . . unless the debtor demonstrates that it has  
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reasonably attempted, but failed, to obtain unsecured credit under Sections 364(a) or (b). . . The

1 cases clearly establish that although a debtor is not required to seek credit from every possible  
 2 source, a debtor must show that it has made reasonable effort to seek other sources of credit  
 3 available under section 364(a) and (b)."); In re Snowshoe Co., Inc., 789 F. 2d 1085, 1088 (4th Cir.  
 4 1986) ("The statute imposes no duty to seek credit from every possible lender before concluding  
 5 that such credit is unavailable. This is particularly true when, as the court determined here, time is  
 6 of the essence..."); In re Reading Tube Industries, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987)  
 7 (Chapter 11 debtor seeking Bankruptcy Court approval of post-petition financing agreement which  
 8 would grant lender superpriority must demonstrate under 11 U.S.C. §364(d) unsuccessful good  
 9 faith effort to obtain less onerous financing by proving debtor attempted to contact at least several  
 10 available lending institutions).

11           **B. The Debtor has good business reasons justifying the proposed loan.**

12           To obtain relief under Section 364(c) a debtor must provide evidence that there is a good  
 13 business reason justifying the proposed financing, and that the Debtor cannot secure the same  
 14 financing terms on an administrative priority basis. As more fully explained in the Stegmann  
 15 Declaration, the Debtor is seeking the financing to provide liquidity to continue post-petition  
 16 operations in order to obtain the long term investment needed to successfully reorganize. On the  
 17 facts of this case, the Debtor is entitled to relief under Section 364(c)(1). See, In re Snowshoe Co.,  
 18 Inc., 789 F. 2d 1085, 1088 (4th Cir. 1986) ("The statute imposes no duty to seek credit from every  
 19 possible lender before concluding that such credit is unavailable. This is particularly true when, as  
 20 the court determined here, time is of the essence...").

21           **C. The Amended DIP Loan Does Not Contain Provisions Proscribed by the Local**  
 22 **Rules.**

23           As indicated in the attached Declaration of Charles Liu, the Amended DIP Loan does not  
 24 contain any of the following:

25           1. Provisions that grant cross-collateralization protection (other than replacement liens) to  
 26 the prepetition secured creditor (i.e.; clauses that secure prepetition debt by post-petition assets in  
 27 which the secured creditor would not otherwise have a security interest by virtue of its prepetition  
 28 security agreement or applicable law).

- 1        2. Provisions or findings of fact that bind the estate or all parties in interest with respect to
- 2                the validity, perfection or amount of the secured creditor's prepetition lien or debt or the
- 3                waiver of claims against the secured creditors without first giving parties in interest at least
- 4                seventy five (75) days from the entry of the interim order and the official committee of unsecured
- 5                creditors, if formed, no less than sixty (60) days notice from the later of the date of its formation or
- 6                the date of its retention of counsel to investigate such matters, unless otherwise directed by the
- 7                court.
- 8        3. Provisions that seek to waive rights under 11 U.S.C. § 506(c).
- 9        4. Provisions that grant immediately to the prepetition secured creditor liens on the
- 10                debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, and 549.
- 11        5. Provisions that "roll over" prepetition debt of the prepetition secured creditor to
- 12                postpetition debt.
- 13        6. Provisions that provide carveouts for administrative expenses that do not treat all
- 14                professionals equally or on a pro rata basis.
- 15        7. Provisions in any agreement for use of cash collateral, financing or conditioning the
- 16                automatic stay that in effect operate to divest the debtor-in-possession of any discretion in the
- 17                formulation of a plan or administration of the estate or limit access to the court to seek any relief
- 18                under other applicable provisions of law. Such provisions include, without limitation, agreements
- 19                with respect to the treatment of claims.

20                **VI**

21                **CONCLUSION**

22        For the foregoing reasons, the Debtor respectfully requests that the Court grant the relief  
23        prayed for herein.

24        DATED: July 31, 2009

**WINTHROP COUCHOT  
PROFESSIONAL CORPORATION**

26        By: /s/ Marc J. Winthrop

27                Marc J. Winthrop

28                Charles Liu

General Insolvency Counsel for  
Debtor and Debtor-in-Possession

**DECLARATION OF THOMAS STEGMANN**

I, Thomas Stegmann, hereby declare to the best of my knowledge and belief as follows:

1. I am the Chief Executive Officer of Phage Biotechnology Corporation, the debtor and debtor-in-possession herein (“Phage” or “Debtor”). The facts stated herein are within my personal knowledge or information, whether acquired directly, or through my familiarity with the Debtor. The opinions expressed herein represent the opinions of the Debtor entity, of which I am an authorized agent, unless otherwise indicated.

2. Attached hereto as Exhibit "A" is a copy of that Extension and Amendment to Loan Agreement, Amendment to Secured Convertible Promissory Note, Amendment to Security Agreement, and Amendment to Lenders Rights Agreement (the "Amended DIP Facility") in substantially final form.

3. Attached hereto as Exhibit "B" is a copy of the Interim Budget for the use of the proceeds of the Amended DIP Loan prior to the final hearing on the Motion.

4. Attached hereto as Exhibit "C" is a copy of the Budget for the use of the proceeds of the Amended DIP Loan after the final hearing on the Motion.

5. The Debtor is a Delaware corporation founded in 1998 with its corporate office and research and manufacturing facilities located in San Diego, California. The Debtor generates manufacturing and R&D revenue for work performed at the request of a related company, CardioVascular Biotherapeutics (“Cardio”). The revenue generated from this sole customer is not enough to produce a cash profit, and pay Note Obligations and other debts, and, in fact, the Debtor has not received money from Cardio for some time. The Debtor currently employs 11 people, including part time employees and consultants of various kinds. From the Debtor’s inception until October 7, 2008, the Debtor’s Chairman, President, and CEO was Daniel Montano (“Montano”).

6. The Debtor's executive offices and R&D facility are in San Diego, California consists of approximately 2,000 square feet of industrial space, pursuant to a lease expiring in 2009. The Debtor's manufacturing facility in San Diego, California consists of approximately 7,000 square feet of industrial space, pursuant to a lease expiring in 2013.

1       6.     As a development stage company that does not generate significant revenue, the  
2 Debtor depends significantly on external funding for survival and progress. A majority of the  
3 external funding provided to date has come from the holders (the “Noteholders”) of the Debtor’s  
4 promissory notes (the “Notes”). The Debtor’s promissory notes were issued at various dates from  
5 2001 through 2004 with a three year maturity date. The Debtor raised a total of \$16.7 million in  
6 the period from 2001 through 2004 from two series of convertible promissory notes. Series I  
7 totaled \$11.6 million principal with 233 Noteholders and Series II totaled \$5.1 million of principal  
8 with 20 Noteholders. The principal and accrued interest of these Notes now totals approximately  
9 \$23.5 million. From late summer 2005 until summer of 2008, the Debtor raised net proceeds of  
10 \$3.0 million through sales of Series B Preferred Shares, and an additional \$3.0 million of outside  
11 capital in the form of loans to the Debtor. This capital totaling \$6.0 million was grossly inadequate  
12 in relation to the Debtor’s current Note Obligations due of \$23.5 million, other loans and trade  
13 debt, its current operating needs, and the scale of its opportunity. This failure to raise sufficient  
14 capital has led to the Debtor defaulting on its Note obligations as well as obligations to other  
15 creditors. As far as the Debtor is aware, there are no secured creditors in this case other than the  
16 DIP Lender who provided the DIP Loan and who is providing the Amended DIP Loan.

17       7.     The Debtor’s intellectual property includes five U.S. patents and related foreign  
18 patent approvals in European countries with large markets for the Debtor’s drug candidates. In  
19 Japan, three of the Debtor’s U.S. Patents are currently being examined.

20       8.     The Debtor’s main route to commercialization and profitability is to seek further  
21 revenue generating activities for its licensed San Diego manufacturing facility, and to gain U.S.  
22 Food and Drug Administration (“FDA”) approval to commercialize its bio-generic and proprietary  
23 drug portfolio to be manufactured by the Phage process. At present two compounds are in FDA  
24 clinical trials: Phage’s Human Growth Hormone (“HGH”) for short stature children and Cardio’s  
25 Fibroblast Growth Factor (“FGF”) for treatment of severe coronary heart disease, with a third  
26 clinical trial for which Phage has received FDA approval to begin using FGF as a wound healing  
27 treatment.

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9. On October 2, 2008 certain creditors of the Debtor filed an involuntary Chapter 7  
petition against the Debtor (the "Petitioning Creditors").

3           10. On October 7, 2008, Mr. Montano resigned and the Debtor appointed one of its  
4 board members, Dr. Stegmann, to be the Debtor's new CEO. The Debtor also appointed two of  
5 the Petitioning Creditors, Richard Ritter and Robert Chanson, to the Debtor's board. The Debtor's  
6 new board decided it is in the Debtor's best interest to reorganize in a Chapter 11 case so the  
7 Debtor converted its involuntary Chapter 7 case to a voluntary Chapter 11 case.

8        11.      The Debtor's turnaround effort, which is now substantially underway, first focused  
9 on obtaining emergency capital to pay the Debtor's operating expenses and protect its property.  
10 Thus stabilized, the Debtor has been pursuing long term capital to develop and commercialize its  
11 intellectual property.

12       12. The Debtor is seeking this additional financing to provide liquidity for post-petition  
13 operations and even more importantly to ensure the continued support of its employees and  
14 vendors providing critically needed goods and services while the Debtor proceeds with its clinical  
15 trials and, more importantly, continues cultivating relationships targeted at raising the long term  
16 capital needed to conduct the reorganization.

17       14. Despite the Debtor's diligent efforts to obtain financing from other sources  
18 prepetition, it has been unable to obtain credit. Accordingly, the terms presented to the court are  
19 believed to be the best available option for the Debtor at this point in time, for this type of  
20 emergency capital loan, given the Debtor's substantially overleveraged balance sheet, and its  
21 history of losses.

22 I declare that the foregoing is true and correct under the penalty of perjury.

23 Executed this 29th day of July 2009, in Petersberg, Germany.

Prof. Dr. med. Th. Stegmann

**DECLARATION OF CHARLES LIU**

I, Charles Liu, hereby declare and state as follows:

1. I am an attorney with Winthrop Couchot Professional Corporation, the proposed general insolvency counsel to Phage Biotechnology Corporation, the debtor and debtor-in-possession herein (“Phage” or “Debtor”). The statements made herein have been acquired through my personal knowledge or information. This declaration is in support of the Debtor’s Motion (the “Motion”) for Use of the Debtor-in-Possession Loan (the “Amended DIP Loan”).

2. The Amended DIP Loan, attached to the Stegmann Declaration as Exhibit "A," does not contain any of the following:

Provisions that grant cross-collateralization protection (other than replacement liens) to the prepetition secured creditor (i.e.; clauses that secure prepetition debt by post-petition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law).

Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or debt or the waiver of claims against the secured creditors without first giving parties in interest at least seventy-five (75) days from the entry of the interim order and the official committee of unsecured creditors, if formed, no less than sixty (60) days notice from the later of the date of its formation or the date of its retention of counsel to investigate such matters, unless otherwise directed by the court.

Provisions that seek to waive rights under 11 U.S.C. § 506(c).

Provisions that grant immediately to the prepetition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, and 549.

Provisions that “roll over” prepetition debt of the prepetition secured creditor to postpetition debt.

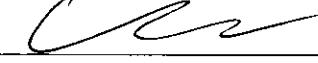
Provisions which provide carveouts for administrative expenses that do not treat all professionals equally or on a pro rata basis.

Provisions in any agreement for use of cash collateral, financing or conditioning the automatic stay that in effect operate to divest the debtor-in-possession of any discretion in the

1 formulation of a plan or administration of the estate or limit access to the court to seek any relief  
2 under other applicable provisions of law. Such provisions include, without limitation, agreements  
3 with respect to the treatment of claims.

4 I declare that the foregoing is true and correct under the penalty of perjury.

5 Executed this 3<sup>1</sup>th day of July 2009, in Newport Beach, California.

6   
7 Charles Liu

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# **EXHIBIT “A”**

**AMENDMENT TO SECURED CONVERTIBLE PROMISSORY NOTE**

This AMENDMENT TO SECURED CONVERTIBLE PROMISSORY NOTE (this "Amendment") is entered into and is effective as of \_\_\_\_\_, 2009 (the "Effective Date") between Phage Biotechnology Corporation, a Delaware corporation (the "Company") and Richard Ritter, as collateral agent ("Agent") for the persons and entities lending funds to the Company pursuant to the terms of the Loan Agreement dated November 19, 2008, as amended (including all successors and assigns, the "Lenders").

**Recitals**

A. The Company previously made and delivered to Lenders Convertible Secured Promissory Note(s) in the aggregate amount of up to \$1,500,000 on November 19, 2008 ("Note(s)") pursuant to the terms of the Loan Agreement, Security Agreement and Lenders Rights Agreement all dated November 19, 2008 (together with the Note(s), the "Loan Documents"). Capitalized terms not defined herein shall have the respective meanings ascribed to them in the Loan Documents, as applicable and as amended as of the Effective Date.

B. The Company has requested and the Lenders have agreed to make additional funds available to the Company in an amount up to \$1,000,000 pursuant to the terms and conditions of the Loan Agreement, as amended, and the parties desire to amend the Note(s) to reflect the additional borrowings as provided herein.

C. Other than as expressly set forth herein, the parties intend that all the terms of the Note(s) shall remain unchanged and in full force and effect.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the parties hereto amend the Note(s), and covenant and agree, as follows:

1. Recitals Incorporated. The recitals set forth above are hereby incorporated by reference.

2. Representations and Warranties. The Company reaffirms all the representations and Warranties set forth in Section 10 of the Note(s).

3. Amendments.

3.1. Principal Amount. The Heading and initial paragraph of the Note(s) are hereby amended to provide that the aggregate principal amount of the Note(s) is \$2,500,000.

3.2. Disbursements. Section 3 of the Note(s) are hereby amended to read as follows:

"The Company may, from time to time, before the Maturity Date (as defined below), request from Lender, and Lender shall disburse, provided that the Company is not in default under any of the Loan Documents, amounts under this Note until the Company has borrowed principal in the

amount set forth in the introductory paragraph, subject to all of the limitations, terms and conditions of the Loan Documents, at the times and in the amounts as set forth in the Loan Agreement, as amended. Each request shall be accompanied by a certificate executed by an officer of the Company attesting to the continued accuracy of the representations and warranties set forth in the Loan Agreement and full compliance with all of the Company's covenants set forth in the Loan Agreement. All disbursements made under this Note shall be recorded on attached Exhibit A."

3.3. Maturity. Section 4 of the Note(s) is amended to read as follows:

"Subject to Section 6, principal and any accrued but unpaid interest under this Note shall be due and payable upon the earlier of: (a) June 30, 2010, (b) the occurrence of the closing of a Funding Event ("Funding Closing Date"), or (c) the occurrence of an Event of Default (each, a "Maturity Date")."

4. No Other Change. Except as modified by this Amendment, the parties intend that all the terms of the Note(s) shall remain unchanged and in full force and effect. This Note is secured by the Collateral pursuant to the terms of the Security Agreement between Company and Agent on behalf of Lenders, as effected through the Lenders Rights Agreement, each as amended through the Effective Date.

The parties have executed this Amendment to Secured Convertible Promissory Note as of the Effective Date.

**COMPANY:**

**PHAGE BIOTECHNOLOGY CORPORATION**

for. Dr. med. Th. Stegmann

By:

Name: Dr. Thomas Stegmann, M.D. Ph.D  
Title: CEO + President

Address: 6868 Nancy Ridge Drive, Suite 100  
San Diego CA 92121

**AGREED TO AND ACCEPTED:**

By: RICHARD RISER  
Name: INTERNATIONAL LEGAL CONSULTANTS  
Title: PROPRIOR

Address: P.O. Box 40952  
Drive, Dubai, UAE

**LOAN EXTENSION AND AMENDMENT TO LOAN AGREEMENT**

THIS LOAN EXTENSION AND AMENDMENT TO LOAN AGREEMENT (this "Extension and Amendment") is entered into as of and is effective as of \_\_\_\_\_, 2009 (the "Effective Date") between Phage Biotechnology Corporation, a Delaware corporation (the "Company") and Richard Ritter, as collateral agent ("Agent") for the persons and entities lending funds to the Company pursuant to the terms of the Loan Agreement dated November 19, 2008, as amended (including all successors and assigns, the "Lenders").

**RECITALS**

A. The Company is the debtor in Case Number 08-09859-LA7, United States Bankruptcy Court, Southern District of California (the "Court"). The Company and Lenders, directly or through Agent, are parties to a Loan Agreement, Security Agreement and Lenders Rights Agreement all dated November 19, 2008 (together with the Secured Convertible Promissory Notes delivered pursuant thereto (the "Notes", the "Loan Documents"). Capitalized terms not defined herein shall have the respective meanings ascribed to them in the Loan Documents, as applicable and as amended through the Effective Date.

B. The Company has requested the Maturity Date of the Notes be extended and Lenders provide additional funding in an amount up to \$1,000,000 to the Company. Approval for such extension and financing was sought by motion made to the Court based on the Company's proffered need for financing to meet immediate needs for cash and based upon a budget (the "Budget") filed in connection with such request. The Company intends to use the financing provided hereunder pursuant to the order of the Court approving this Agreement and pursuant to the Budget.

C. The Company and Lenders, directly or through Agent, have or will be executing the following agreements: (i) Amendment to Secured Convertible Promissory Notes reflecting loans in an updated aggregate amount of up to \$2,500,000, the form of which is attached as Exhibit A, (ii) Amendment to Security Agreement, the form of which is attached as Exhibit B, and (iii) Amendment to Lender's Rights Agreement, the form of which is attached as Exhibit C.

D. All capitalized terms not specifically defined in this Agreement have the respective meanings ascribed to them in the Loan Documents.

E. Other than as expressly set forth herein, the parties intend that all the terms of the Loan Agreement shall remain unchanged and in full force and effect.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the parties hereto amend the Loan Agreement, and covenant and agree, as follows:

1. **Recitals Incorporated.** The recitals set forth above are hereby incorporated by reference.

2. **Representations and Warranties.** The Company reaffirms all the representations and Warranties set forth in Article III of the Loan Agreement.

3. **Extension Fee.** As consideration for Lender's execution of this Extension and Amendment and in addition to any other sums due under the Loan Documents, the Company will pay Lenders on the date hereof, an extension fee in the amount of \$75,000 on or before the Maturity Date of the Notes.

4. **Amendments.**

4.1 Section 2.1 of the Loan Agreement is amended to read as follows:

"The Company agrees to take, and Lenders agree to make, upon the terms and conditions contained in this Agreement, loans in the principal sum of up to Two Million Five Hundred Thousand Dollars (\$2,500,000.00) (the "Loans"). Notwithstanding the foregoing, the Lenders' commitment to lend after the Effective Date is limited to \$200,000 as set forth in Section 5.1(d). The outstanding principal balance and interest of the Loans shall be repaid, pursuant to the terms of the Notes.

4.2 Section 2.2 is amended to add the following:

"In order to consummate the Loans reflected by Section 2.1, the Company will deliver to Lenders the following documents, fully executed, in the form prescribed by Lenders, together with any additional documents, items and funds as Lenders may require:

- (1) Amendments to Secured Convertible Promissory Notes.
- (2) Amendment to Security Agreement.
- (3) Amendment to Lenders Rights Agreement
- (4) Such other items as Lenders may reasonably require.

4.3 Section 5.1 is amended to add the following:

"(d) Commencing on the Effective Date, the Company shall have the ability to request, and the Lenders shall disburse, provided the Company is not in default under any of the Loan Documents and the continued accuracy of the Company's representations set forth in Article III, disbursements, in the aggregate amount of Two Hundred Thousand dollars (\$200,000), within ten (10) business days of the receipt of written request from the Company to Agent. Thereafter, the Company shall have the ability to request, and the Lenders shall use their commercially reasonable efforts to disburse to the Company, subject to availability of funds, provided the Company is not in default under any of the Loan Documents and the continued accuracy of the Company's representations set forth in Article III, advances in such amounts and at such times as Lenders may determine, following the receipt of written request from the Company to Agent.

4.4 The third sentence of Section 5.2 is amended to include the reference to subsection 5.1 (d).

4.5 The Exhibits to the Loan Agreement are amended to include by reference the following:

- (1) Form of Amendment to Secured Convertible Promissory Notes.
- (2) Form of Amendment to Security Agreement.
- (3) Form of Amendment to Lenders Rights Agreement.

5. **No Other Change.** Except as modified by this Amendment, the parties intend that all the terms of the Loan Agreement shall remain unchanged and in full force and effect.

*[Signature page follows.]*

**Signature Page for Extension and Amendment to Loan Agreement**

IN WITNESS WHEREOF, the parties have duly executed this Extension and Amendment to Loan Agreement as of the Effective Date.

COMPANY:

PHAGE BIOTECHNOLOGY CORPORATION, a  
Delaware corporation

Prof. Dr. med. Th. Stegmann

By: \_\_\_\_\_

Name: Dr. Thomas J. Stegmann, MD, PhDIts: CEO & President,Phage

LENDERS:

By: RICHARD NITZKName: INTERNATIONAL LEGAL CONSULTANTSIts: PROPRIETORR. Nitzk

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## AMENDMENT TO SECURITY AGREEMENT

This Amendment to Security Agreement (this "Amendment") is entered into as of \_\_\_\_\_, 2009 (the "Effective Date"), by and between Phage Biotechnology Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Company"), and Richard Ritter in his capacity as Agent (as defined in Lenders Rights Agreement as amended as of the Effective Date) for the benefit of Lenders (as defined in the Loan Agreement as amended as of the Effective Date) (collectively, the "Lenders") as secured party. The parties agree as follows:

### Recitals

A. The Company is the debtor in Case Number 08-09859-LA7, United States Bankruptcy Court, Southern District of California (the "Court"). The Company and Lenders are parties to a Loan Agreement, Security Agreement and Lenders Rights Agreement all dated November 19, 2008 (together with the Secured Convertible Promissory Notes delivered pursuant thereto (the "Notes", the "Loan Documents"). Capitalized terms not defined herein shall have the respective meanings ascribed to them in the Loan Documents, as applicable and as amended through the Effective Date.

B. The Company has requested the Maturity Date of the Notes be extended, and Lenders provide additional funding in an amount up to One Million dollars (\$1,000,000) to the Company for an aggregate loan amount of up to Two Million Five Hundred Thousand dollars \$2,500,000.

C. The parties desire to amend the Security Agreement to incorporate the additional indebtedness referred to in Section 1.2 and to amend Exhibit A to add additional Collateral.

D. Other than as expressly set forth herein, the parties intend that all the terms of the Security Agreement shall remain unchanged and in full force and effect.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the parties hereto amend the Security Agreement, and covenant and agree, as follows:

1. Recitals Incorporated. The recitals set forth above are hereby incorporated by reference.

2. Amendments.

2.1 Definitions. The first paragraph of Section 2 is amended to read as follows:

"All capitalized terms not specifically defined in this Agreement have the meaning ascribed to them in the Loan Agreement, Notes, or Lenders Rights Agreement, as applicable, and as amended through the Effective Date, or if not defined in this Agreement, the Loan Agreement, Notes, or Lenders Rights Agreement shall have the meanings set forth in the California Uniform Commercial Code (the "UCC"). In the event of any conflict between this Agreement and the Notes, Loan Agreement, or Lenders Rights Agreement, the Loan Agreement shall control. For purposes of this Agreement, the following definitions shall apply:"

2.2 Exhibit A is amended to add the following Application:

Application No. 12/024,889, Pub. No US 2008/0193992; Kluyveromyces Strains Metabolizing Cellulosic and Hemicellulosic Materials.

3. No Other Change. Except as modified by this Amendment, the parties intend that all the terms of the Security Agreement shall remain unchanged and in full force and effect.

*[Signatures on Following Page]*

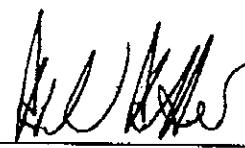
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

The Company:

PHAGE BIOTECHNOLOGY  
CORPORATION

By: Prof. Dr. med. Th. Stegmann  
Name: Dr. Thomas J. Stegmann,  
Title: MD, PhD  
*CEO + President,  
Phage Biotech. Corp.*

Agent:

By: Richard Ritter  


**EXHIBIT A**  
**INTELLECTUAL PROPERTY**

	<b>Patent No.</b>	<b>Issue Date</b>	<b>Title</b>
1	7,435,804	October 14, 2008	Method for obtaining single chain antibodies to human interferon .alpha.2b
2	7,344,876	March 18, 2008	Kluyveromyces strains metabolizing cellulosic and hemicellulosic materials
3	6,794,162	September 21, 2004	Phage- dependent super-production of biologically active protein and peptides
4	6,773,899	August 10, 2004	Phage-dependent superproduction of biologically active protein and peptides
5	6,642,026	November 4, 2003	Method of producing biologically active human acidic fibroblast growth factor and its use in promoting angiogenesis
6	6,268,178	July 31, 2001	Phage- dependent super-production of biologically active protein and peptides
7	7,252,818	August 7, 2007	Method of producing biologically active human acidic fibroblast growth factor and its use in promoting angiogenesis

	<b>Application No.</b>	<b>Publication No.</b>	<b>Title</b>
1	10/947513	20050059129	Biologically active material conjugated with biocompatible polymer with 1:1 complex, preparation method thereof and pharmaceutical composition comprising the same
2	11/187,522	20050281778	Human growth hormone conjugated with biocompatible polymer
3	11/314926	20060134736	Human growth hormone conjugated with biocompatible polymer
4	12/024,889	20080193992	Kluyveromyces Strains Metabolizing Cellulosic and Hemicellulosic Materials

**AMENDMENT TO**  
**LENDERS RIGHTS AGREEMENT**

This Amendment to Lenders Rights Agreement (this "Amendment") is entered into to be effective as of \_\_\_\_\_, 2009 (the "Effective Date"), by and among the undersigned lenders, (the "Lenders" or, individually, a "Lender"), Richard Ritter ("Ritter") as the initial collateral agent for the benefit of Lenders, and Phage Biotechnology Corporation, a Delaware corporation (the "Company") as follows.

**Recitals**

A. The Company and the Lenders directly or through Agent are parties to a Loan Agreement, Security Agreement and Lenders Rights Agreement all dated November 19, 2008 (together with the Secured Convertible Promissory Notes delivered pursuant thereto (the "Note"), the "Loan Documents"). Capitalized terms not defined herein shall have the respective meanings ascribed to them in the Loan Documents, as applicable and as amended through the Effective Date.

B. The Company has requested the Maturity Date of the Notes be extended and Lenders provide additional funding in an amount up to \$1,000,000 to the Company. By this Amendment, each Lender further agrees supplement their appointment of Agent as such Lenders' agent and attorney-in-fact with the right and authority to execute and deliver (i) an Extension and Amendment to Loan Agreement dated as of the Effective Date ("Extension and Amendment") (ii) Amendments to Secured Convertible Promissory Notes reflecting loans in an updated aggregate amount of up to \$2,500,000, the form of which is attached as Exhibit A to the Extension and Amendment, and (iii) an Amendment to Security Agreement, the form of which is attached as Exhibit B to the Extension and Amendment, all of which are incorporated herein by this reference.

C Capitalized terms not defined herein shall have the respective meanings ascribed to them in the Loan Documents, as applicable and as amended through the Effective Date.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the parties hereto amend the Lender Rights Agreement, and covenant and agree, as follows:

1. Recitals Incorporated. The recitals set forth above are hereby incorporated by reference.
2. Amendment. Article 3 of the Lenders Rights Agreement is amended to add a Section 3.4 which reads as follows:

"3.4 The Lenders, and each of them, hereby appoint Agent as such Lenders' agent and attorney-in-fact with the right and authority to execute and deliver (i) an Extension and Amendment to Loan Agreement dated as of the Effective Date ("Extension and Amendment") (ii) Amendments to Secured Convertible Promissory Notes reflecting loans in an updated aggregate amount of up to \$2,500,000, the form of which is attached as Exhibit A to the Extension and Amendment, and (iii) an Amendment to Security Agreement, the form of which is attached as Exhibit B to the Extension and Amendment, all of which are incorporated herein by this reference.

3. No Other Change. Except as modified by this Amendment, the parties intend that all the terms of the Lenders Rights Agreement shall remain unchanged and in full force and effect.

***SIGNATURE PAGE FOLLOWS***

**Company:**

Phage Biotechnology Corporation,  
a Delaware corporation Prof. Dr. med. Th. Stegmann

By:

Name: Dr. Thomas J. Heymann, M.D.,  
Its: CEO + President, Ph.D.

Address: 6868 Nancy Ridge Drive  
Suite 100  
San Diego, CA 92121

Agent:

Richard Ritter

Address: P.O.B. 40992  
Deira, Dubai, UAE

**Lenders:**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
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Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
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# **EXHIBIT “B”**



Prepared July 29, 2009

<u>Beginning Cash Balance</u>			
Available to Draw - Current DIP Agreement	\$32,250	\$250	\$71,250
Committed Funds - Amended DIP Agreement	-	-	-
Funds as Available - Amended DIP Agreement	-	-	-
<u>Cash Available</u>	<u>71,250</u>	<u>32,250</u>	<u>71,250</u>
<u>Manufacturing Expenses</u>			
Payroll and Benefits	-	17,500	17,500
Rents, Utilities, Maintenance	23,500	500	24,000
Direct and Indirect Supply Costs + O/H	500	500	1,000
Total Operating Expenses	24,000	18,500	42,500
<u>Administrative Expenses</u>			
Payroll and Benefits	-	13,000	13,000
Consultants	14,500	-	14,500
Legal	-	-	-
Overhead - Insurance, phones, travel	500	500	1,000
Total Admin Expenses	15,000	13,500	28,500
<u>Research and Development</u>			
BS Biology	-	-	-
<u>Total Cash Costs of Operations</u>			
	39,000	32,000	71,000
<u>Cash Balance</u>	<u>\$32,250</u>	<u>\$250</u>	<u>\$250</u>



Prepared July 29, 2009

# **EXHIBIT “C”**



**2009 Mid-Year Cash Operating Forecast**

<b><u>Cash Balance</u></b>					
Available to Draw - Current DIP Agreement		\$71,250	\$31,129	\$66,007	\$78,886
Committed Funds - Amended DIP Agreement		200,000			200,000
Funds as Available - Amended DIP Agreement			250,000	250,000	650,000
<b><u>Cash Available</u></b>		<b><u>271,250</u></b>	<b><u>281,129</u></b>	<b><u>150,000</u></b>	<b><u>921,250</u></b>
				<b><u>228,886</u></b>	
					<b><u>921,250</u></b>
<b><u>Manufacturing Expenses</u></b>					
Payroll and Benefits		52,213	52,213	52,213	208,852
Rents, Utilities, Maintenance		30,000	30,000	30,000	120,000
Direct and Indirect Supply Costs + O/H		<b><u>15,000</u></b>	<b><u>30,000</u></b>	<b><u>25,000</u></b>	<b><u>85,000</u></b>
Total Operating Expenses		<b><u>97,213</u></b>	<b><u>112,213</u></b>	<b><u>107,213</u></b>	<b><u>413,852</u></b>
<b><u>Administrative Expenses</u></b>					
Payroll and Benefits		21,408	21,408	21,408	85,633
Consultants		14,500	14,500	14,500	58,000
Legal		85,000	10,000	10,000	115,000
Overhead - Insurance, phones, travel		10,000	10,000	10,000	40,000
Total Admin Expenses		<b><u>130,908</u></b>	<b><u>55,908</u></b>	<b><u>55,908</u></b>	<b><u>298,633</u></b>
<b><u>Research and Development</u></b>					
BS Biology		12,000	12,000	12,000	48,000
<b><u>Clinical Trials</u></b>					
FGF-1 for Wound Healing - 1A		35,000	62,000	62,000	159,000
<b><u>Total Cash Costs of Operations</u></b>		<b><u>240,121</u></b>	<b><u>215,121</u></b>	<b><u>237,121</u></b>	<b><u>227,121</u></b>
<b><u>Cash Balance</u></b>		<b><u>\$31,129</u></b>	<b><u>\$66,007</u></b>	<b><u>\$78,886</u></b>	<b><u>\$1,765</u></b>
					<b><u>\$1,765</u></b>



2009 Mid-Year Cash Operating Forecast

1 In re:	2 Phage Biotechnology Corporation	3 Debtor(s).	4 CHAPTER 11
			5 CASE NO. 08-09859-LA11

## 4 PROOF OF SERVICE OF DOCUMENT

5 I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business  
 6 address is:

660 Newport Center Drive, 4<sup>th</sup> Floor, Newport Beach, CA 92660. The foregoing document described  
 7 **DEBTOR'S EMERGENCY MOTION FOR ORDER APPROVING ADDITIONAL LOANS UNDER DEBTOR-IN-POSSESSION LOAN:**  
**DECLARATIONS IN SUPPORT THEREOF** will be served or was served in the manner indicated below:

### 8 I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):

9 Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will  
 10 be served by the court via NEF and hyperlink to the document. On July 31, 2009 I checked the CM/ECF  
 11 docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on  
 12 the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- 13 • Michael D. Breslauer mbreslauer@swsslaw.com, wyones@swsslaw.com
- 14 • Charles Liu cliu@winthropcouchot.com, pj@winthropcouchot.com
- 15 • David A. Ortiz david.a.ortiz@usdoj.gov
- 16 • Matthew J. Riopelle mriopelle@foley.com
- 17 • United States Trustee ustp.region15@usdoj.gov
- 18 • Alan Vanderhoff alan.vanderhoff@vanderhofflaw.com, alanvanderhoff@cox.net
- 19 • Victor A. Vilaplana vavilaplana@foley.com
- 20 • Marc J. Winthrop pj@winthropcouchot.com

21  Service information continued on  
 22 attached page

### II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL:

23 On July 31, 2009 I served the following person(s) and/or entity(ies) at the last known address(es) in this  
 24 bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in  
 25 the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as  
 follows.

### 26 SERVICE LIST ATTACHED

27  Service information continued on  
 28 attached page

### III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL:

29 Pursuant to F.R.Civ.P. 5 and/or controlling LBR, July 31, 2009 I served the following person(s) and/or  
 30 entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile  
 31 transmission and/or email as follows.

### 32 SERVICE LIST ATTACHED

33  Service information continued on  
 34 attached page

35 I declare under penalty of perjury under the laws of the United States of America that the foregoing is true  
 36 and correct.

37 July 31, 2009

38 Date

39 Viann Corbin

40 Type Name

41 /s/ Viann Corbin

42 Signature



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SERVICE LIST

## SERVICE BY ELECTRONIC-MAIL

Phage Biotechnology Corporation  
 Attn: Loren King, CFO  
 1635 Village Center Circle, Suite 260  
 Las Vegas, NV 89134  
[siegmann-petersberg@t-online.de](mailto:siegmann-petersberg@t-online.de)  
[Lorenking2002@yahoo.com](mailto:Lorenking2002@yahoo.com)

Phage  
 Special Notice/20 Largest/Secured  
 Document No. 125972

Jawaher Bint Aball  
 Malek Al Sheikh  
 P.O. Box 5593  
 Riyadh 11132 Saudi Arabia  
[jademaliklol@yahoo](mailto:jademaliklol@yahoo)

Shellac Limited  
 Attn: Corporate Officer  
 2nd Fl. Sixty Circular Rd  
 Douglas Isle of Man IM1 1SA UK  
[peter.crompton@abacusiom.com](mailto:peter.crompton@abacusiom.com)

MIC-Bjarne Carlsen c/o Armacup  
 Maritime Sves Ltd Lvl 5 Harbour View  
 Bldg 152 Quay St PO Box 106 001  
 Dwntwn Auckland New Zealand  
[biarneearlsen@xtra.co.nz](mailto:biarneearlsen@xtra.co.nz)

International Legal Consultants  
 Solomon Ward Seidenwurm & Smith.  
 LLP  
 Michael D. Breslauer, Esq.  
 401 "B" Street, #1200  
 San Diego, CA 92101  
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